

Condominium Public Report On The Breakers

1.
 - (a) PROJECT: The Breakers
Honokowai, Maui, Hawaii
 - (b) DEVELOPER: 3702 Lower Honoapiilani, LLC
P O Box 54
Longmont, Colorado 80502
 - (c) REAL ESTATE BROKER: The Breakers Realty LLC dba The Breakers Realty
3708 Lower Honoapiilani Road, #40
Lahaina, Hawaii 96761
 - (d) PROPERTY MANAGER:
(Proposed) Commercial Properties of Maui Management, Inc.
1962 Wells St. #B
Wailuku, HI 96793

(a) Number of apartments in Project for residential use: 84 (60 covered by this registration)

(b) Proposed number of apartments in Project for hotel use: 0

(c) Extent of commercial or other non-residential development in the Project: None

Developer makes no separate warranties on construction, habitability, or on appliances and fixtures. Developer expects that the general contractor will issue standard one-year warranties of construction. Developer will pass through all manufacturers' warranties on appliances and fixtures to purchasers. Purchaser agrees that the Condominium Map is not a warranty of any type, and is intended only to show the project location, layout, apartment numbers and apartment dimensions.

Attached to this Public Report as Exhibit C is a breakdown of the annual maintenance charges and the monthly estimated cost for each apartment in the Project, prepared by the Project Manager for a one-year period, and certified to have been based on generally accepted accounting principles. The attached breakdown of annual maintenance charges and the estimated cost for each apartment is subject to change based on actual costs of the items listed. The Developer can make no assurances regarding the estimated maintenance assessments. Variables such as inflation, uninsured casualty loss or damage, increased or decreased services from those contemplated by the Project Manager, apartment owner delinquencies and other factors may cause the maintenance assessments to be greater or less than the estimated maintenance assessments.

The breakdown in the estimated maintenance costs do not include individual charges for utilities or services beyond those listed in this Public Report or the Buyer's obligation for real property taxes and does not include or otherwise take into account the one-time "start-up" fee required to be paid in addition to the normal maintenance charges.

NOTE: THE DEVELOPER ADVISES THAT COSTS AND EXPENSES OF MAINTENANCE AND OPERATION OF A CONDOMINIUM PROJECT ARE VERY DIFFICULT TO ESTIMATE INITIALLY AND EVEN IF SUCH MAINTENANCE CHARGES HAVE BEEN ACCURATELY ESTIMATED, SUCH CHARGES WILL TEND TO INCREASE IN AN INFLATIONARY ECONOMY AND AS THE IMPROVEMENTS AGE, MAINTENANCE CHARGES CAN VARY DEPENDING ON SERVICES DESIRED BY APARTMENT OWNERS. THE BUYER SHOULD EXAMINE THE MAINTENANCE CHARGE SCHEDULE TO SEE WHAT SERVICES ARE INCLUDED IN THE SCHEDULE.

5. TEMPORARY ASSUMPTION BY THE DEVELOPER OF ACTUAL COMMON EXPENSES:

The Developer may assume all the actual common expenses of the Project (and therefore an apartment owner will not be obligated for the payment of his or her respective share of the common expense) until such time as the Developer files with the Real Estate Commission of the State of Hawaii an amended Disclosure Abstract which states that after a date certain, the respective apartment owner shall thereafter be obligated to pay for his respective share of common expenses that is allocated to his apartment; provided, however, that such amended Disclosure Abstract shall be filed at least thirty (30) days in advance with the Real Estate Commission, with a copy thereof being delivered either by mail or personal delivery after the filing to each of the apartment owners whose maintenance expenses were assumed by the Developer. The Developer shall have no obligation to pay any start-up fees or to pay for any cash reserves or other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

EXCLUSIVE PROJECT BROKER AGREEMENT
The Breakers Condominium

THIS PROJECT BROKER AGREEMENT (the "Agreement") is made this 15 day of July 2010 but effective as of July 15, 2010 (the "Effective Date"), by and between 3702 Lower Honoapiilani Rd LLC, a Colorado limited liability company (the "Developer"), whose business and post office address is PO Box 54, Longmont Co 80502, and The Breakers Realty LLC, a Hawaii limited liability company (the "Project Broker"), whose business and post office address is 3708 Lower Honoapiilani Rd #40 Lahaina, HI 96761.

RECITALS:

A. Developer is the record owner of that certain real property located at Kahului, Island and County of Maui, State of Hawaii, and designated by Tax Map Key No. (2) 4-3-6-69. Developer intends to develop the Project (as defined below) and desires to appoint Project Broker as its exclusive sales agent on an exclusive right to sell basis to conduct Retail Sales and Bulk Sales of the Units in the Project, to process Sales Contracts for such sales, and to coordinate sales activities for the Project.

B. Project Broker has agreed to act as Developer's agent for Retail and Bulk Sales of Units in the Project, and for processing and coordinating such sales in the Project, in accordance with the terms and conditions set forth herein.

AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meaning set forth below:

1.1 "Bulk Sale" means a sale of five (5) or more Units in the Project, excluding Developer Sales, in a single transaction.

1.2 "Bureau" means the Bureau of Conveyances of the State of Hawaii.

1.3 "Close of Escrow" or "closing" means the date on which the instrument that conveys a Unit to a buyer is recorded in the Bureau.

1.4 "Commissions" means the amounts payable by Developer pursuant to Section 6 hereof.

1.5 "Condominium Law" means Chapter 514A or Chapter 514B of the Hawaii Revised Statutes, as amended, whichever chapter shall apply to the Project from time to time.

1.6 “Cooperating Broker” means any licensed real estate broker other than the Project Broker.

1.7 “Developer” means 3702 Lower Honoapiilani LLC, a Colorado limited liability company, as Developer of the Project.

1.8 “Developer Sale” means (a) a sale made by Developer of one or more Units in the Project (but no more than a total of 10 Units during the term of this Agreement) to an employee, retiree, agent, or contractor of Developer or an entity or person related to Developer or the individuals directly or indirectly owning an interest in the Development; or (b) a sale made by Developer of any number of Units to a person or entity who acquires substantially all of Developer’s remaining rights and/or inventory in the Project for further development and/or sale.

1.9 “Project” means the condominium project known or to be known as “The Breakers condominium” located at Honokowai, Maui, and containing 60 residential units and the condos corresponding parking stall. Only sales of residential Units are covered by this Agreement.

1.10 “Project Broker” means The Breakers Realty LLC a Hawaii limited liability company doing business as “The Breakers Realty LLC”.

1.11 “Project Documents” shall mean the documents pertaining to the Project and the sale of Units in the Project provided to Project Broker by Developer, including, but not limited to, the Sales Contracts, sales brochures, and the Project’s condominium documents and public reports.

1.12 “Retail Prospect” means any person who was shown a Unit in the Project by Project Broker during the term of this Agreement and with whom Project Broker has conducted negotiations prior to the Termination Date, and whose name is on the written list submitted by Project Broker to Developer within five days after the termination of this Agreement.

1.13 “Retail Sales” shall mean any sales of Units in the Project other than Bulk Sales or Developer Sales.

1.14 “Sales Contract” means the Developer’s standard sales contract for the sale of Units in the Project or other form of contract selected by Developer, as amended from time to time by Developer.

1.15 “Sales Price” means the sales price for a Unit, as set forth in the applicable Sales Contract and any amendments hereto, minus any sales incentives (e.g., giveaways, interest rate buy downs, etc.).

1.16 “Sale” or “Sold” means the consummation of a sale to a buyer as evidenced by the recordation in the Bureau of a deed conveying title to a Unit to the buyer.

1.17 “Sales Staff” means licensed sales agents of the Project Broker authorized by Developer in writing to sell the Units in the Project. Project Broker shall not add brokers or sales agents to the Sales Staff without Developer’s prior written approval.

1.18 "Termination Date" means the date upon which this Agreement terminates, whether by expiration of the term hereof or by earlier termination in accordance with the provisions of Sections 13.1 or 13.2.

1.19 "Unit" means any of the 60 residential condominium units located within the Project. .

2. **Appointment.** Developer hereby appoints Project Broker as its exclusive sales agent to conduct Retail and Bulk Sales of Units in the Project, and to process and coordinate such sales upon the terms and conditions set forth herein. This Agreement is intended to be an "exclusive right to sell" agreement, which means that the Units are being listed only with Project Broker, subject to the terms hereof.

3. **Term.** This Agreement shall be for a term commencing as of the Effective Date and ending March 29th, 2011; subject, however, to termination at any time in accordance with Section 13 hereof.

4. **Terms of Sale.** The Sales Price of each Unit in the Project and all other terms and conditions of each sale shall be determined by the Developer in its sole discretion. Developer reserves and shall have the right to determine order in which it considers Sales Contracts submitted by the Project Broker, the right to reject any Sales Contract presented to it by the Project Broker for any reason, and the right to cancel any Sales Contract without liability to Project Broker for any commission which would otherwise have been payable. Developer further reserves the right to change the Sales Prices for the Units in the Project.

5. **Project Broker Covenants and Obligations.** Project Broker covenants and agrees with Developer as follows:

5.1 **Licensing Requirements.** Each member of the Sale Staff shall at all times during the term of this Agreement maintain in good standing, an active real estate broker's or salesperson's license, as appropriate, in the State of Hawaii, and all other necessary licenses, permits and certifications. To the extent required by law, Project Broker shall apply for and maintain a current site office license for the Project through entire term thereof.

5.2 **Sales Staff.** Developer shall have the right to approve all members of the Sales Staff, including the Project sales manager and the primary sales agents. Only those persons authorized in writing by Developer shall be members of the Sales Staff. Project Broker agrees to immediately remove any member of the Sales Staff upon Developer's request. Project Broker shall orient and train the Sales Staff.

5.3 **Compliance with Laws.** Project Broker shall comply with all federal, state and county laws, rules and regulations applicable to the services provided by Project Broker and shall maintain adequate supervision over the Sales Staff, to ensure such compliance by all persons acting under Project Broker. Without limiting the generality of the foregoing, Project Broker shall comply with all requirements set forth in Section 9 hereof.

5.4 **Public Report.** Broker acknowledges that Developer has obtained a condominium public report for the Project. The Real Estate commission has issued an effective date for the Project's first condominium public report.

5.5 **Sales Activities.** Project Broker shall use its best efforts, skill and judgment to market the Project, and to assist the Developer in establishing, implementing and operating a sales program for the Project. Sales activities by Project Broker shall include, but are not limited to, those activities described in Exhibit "A" attached hereto; direct mail advertising; preparing newsletters; presenting information seminars to homeowners, brokers and real estate sales persons; hosting informational parties and meetings; holding open houses; and traveling out-of-state as necessary. Each member of the Sales Staff shall carefully read, review and become familiar with all Project Documents prior to commencing any sale activities, and shall comply with all instructions and directives provided to Project Broker by Developer, and shall comply with all requirements set forth in Section 9 hereof.

5.6 **Administrative Activities.** Project Broker shall (a) maintain a trained sales and administrative staff sufficient to fulfill its obligations hereunder; (b) adequately staff, in accordance with a schedule approved by Developer, the Project sales office and model Units provided by Developer, during reasonable business hours designated by Developer; and (c) coordinate all closing activities for the Units sold by Project Broker. At a minimum, Project Broker agrees that at least one primary sales person shall be present at the Project sales office (if the Developer provides a sales office) between the hours of 10:00 a.m. and 5:00 p.m. seven days per week.

5.7 **Representations and Warranties.** Project Broker agrees that it will not make any warranties or representations other than those agreed to in writing by Developer and Project Broker. Without limiting the generality of the foregoing, Project Broker agrees that it shall not make any express warranties of any kind, including, but not limited to, warranties of habitability, merchantability, or fitness for use, or any representations regarding the investment value or potential value of Units, possible rental opportunities or tax consequences of owning a Unit in the Project. Project Broker agrees to follow Developer's instructions regarding disclosure materials which are to be provided to prospective buyers and which are required in connection with the marketing and sale of Units in the Project.

5.8 **Marketing and Advertising Budget.** Project Broker shall not be required to contribute any amounts to the marketing or advertising costs of the Project. However, Project Broker shall assist Developer in preparing a marketing and advertising budget for the Project. Project Broker shall not publish or disseminate any advertising or marketing materials relating to the Project or Developer without Developer's prior written approval, which approval may be withheld in Developer's sole discretion. The marketing and advertising budget shall be reviewed by Developer and Project Broker on a quarterly basis and adjusted as necessary to achieve maximum sales of the Units in the Project.

5.9 **Advertising and Community Relations.** At the request of Developer, Project Broker shall assist in the preparation of the advertising and community relations budgets for the Project. Project Broker shall advise Developer on all aspects of advertising and community relations campaigns; provided that Developer shall make all final determinations relating thereto; and shall be responsible for the implementation of the same.

5.10 **Status Reports.** Project Broker shall maintain accurate and current records of the status of all its Project transactions, including names and addresses of buyers, due dates of deposits and other payments, deadlines for and satisfaction of any contingencies, and schedules of closing dates. Project Broker shall provide a status report on all such items to Developer on a weekly basis, or more often if warranted by sales activities. Project Broker shall also record and provide such other information on prospective buyers as Developer may request. Exhibit "C"

5.11 **Sales Follow-Through.** Upon acceptance by Developer of a Sales Contract submitted to it by Project Broker, Project Broker shall take all steps necessary to arrange for the closing of such sale, including without limitation (a) assisting the buyers in obtaining any necessary financing approvals in a timely fashion; (b) obtaining payment of additional deposits required under the Sales Contract; (c) obtaining receipts for documents required by Developer (including receipts for condominium public reports); (d) obtaining all necessary approvals and signatures from buyers (including waivers of the right to cancel the Sales Contracts pursuant to the Condominium Law); (e) assisting with the satisfaction of any contract contingencies; and (f) coordinating all other closing activities with Developer, any Cooperating Brokers, escrow, lenders and the buyers. Exhibit "C"

5.12 **General Marketing Service.** At the request of Developer, Project Broker shall assist Developer with its marketing program, promotional planning, market research and feasibility studies, pricing strategies and other similar services to help market the project. Project Broker shall provide market research and related data to Developer including written market analyses, from time to time, of competitive development projects on the Island of Maui.

6. **Commission.** Subject to terms of Section 6.8 below, Developer will pay Project Broker the commissions set forth below in Sections 6.1, 6.2, 6.3 or 6.5 if Project Broker has materially performed all of its obligations and duties hereunder and one of the following conditions has occurred: (a) the Close of Escrow for any Retail Sale of any Unit in the Project under a Sales Contract submitted by Project Broker and accepted by Developer during the term of this Agreement; (b) the Close of Escrow for any Retail Sale consummated pursuant to an option contract executed by Developer and buyer during the term of this Agreement; (c) the Close of Escrow for any Retail Sale made to any of Project Broker's Retail Prospects pursuant to a Sales Contracts or option contract executed by Developer and such prospect during the sixty-day period following the termination of this Agreement; or (d) the Close of Escrow for any bulk Sale of Units in the Project under a Sales Contract submitted by Project Broker and accepted by Developer during the term of this Agreement. Commissions will be payable to Project Broker only upon the Close of Escrow.

6.1 **Exclusive Sales Staff Sales.** Project Broker shall be paid a total commission of three and one-half percent (3.5%) of the Sales Price for any Retail Sale of any Unit sold exclusively by a Sales Staff member, including a sale to any customer of a Sales Staff member of any walk-in or phone-in purchaser who is not represented by a non-Sales Staff agent of Project Broker or by a Cooperating Broker.

6.2 **Non-Sales Staff Project Broker Sales.** Project Broker shall be paid a total commission of three and one-half percent of the Sales Price for any Retail Sale of any Unit sold exclusively by an agent of Project Broker who is not a Sales Staff member.

6.3 **Cooperating Broker Sales.** Project Broker shall be paid a total commission of four percent (5.0%) of the Sales Price for any Retail Sale of any Unit sold by a Cooperating Broker. Of this amount, Project Broker shall pay the Cooperating Broker a commission of three percent (3.0%) of the Sales Price for the Cooperating Broker's assistance in bringing the buyer to the Project, and Project Broker shall retain two percent (2.0%) of the Sales Price.

6.3.1 It is understood and agreed that the payment of the Cooperating Broker's commission set forth above in Section 6.3 shall be Project Broker's sole responsibility.

6.3.2 Project Broker agrees to notify the Cooperating Broker of the contingencies and the obligations of the Sales Staff set forth in this Agreement by written notice prepared by Project Broker and approved by Developer.

6.33 Any dispute (including, but not limited to, any disputes as to who is entitled to a commission) which might arise among one or more brokers and Cooperating Brokers or their respective sales personnel shall be resolved by the respective parties and Project Broker will use its best efforts to avoid causing either any interference (including, without limitation, delays in closing) with the marketing or sales of Units in the Project or any other injury to Developer or the Project.

6.4 **Developer Sales.** Notwithstanding the terms of Sections 6.1, 6.2 and 6.3 above, Project Broker shall not be entitled to any commission for any Developer Sales selected by Developer; provided that Developer shall inform Project Broker and Escrow, in writing, that such sale, without commission, is authorized. As soon as practicable after Developer becomes aware of a possible Developer Sale involving any particular unit, Developer shall promptly notify Project Broker of such possible sale.

6.5 **Bulk Sales.** Project Broker shall be paid a total commission of one percent (1%) of the Sales Price for any Bulk Sale in accordance with clause (d) of Section 6 above. Developer shall negotiate any additional commissions directly with any Cooperating Broker or Project Broker agent who is not a Sales Staff member and who has procured the buyer in a Bulk Sale.

6.6 **Cancelled Sales.** In the event that a buyer under a Sales Contract fails to close on the purchase of a Unit for any reason whatsoever, Developer will not be obligated to pay any commission and Project Broker shall have no claim for a fee or commission against Developer or any deposit made by a buyer.

6.7 **Reductions in Commissions.** If Project Broker fails to perform any of its obligations or responsibilities required by this Agreement, including, without limitation, those duties enumerated in Section 5.11, and if, after Developer gives to Project Broker written notice of such failure to perform, Project Broker continues to perform unsatisfactorily for thirty (30) days, the commissions(s) payable to Project Broker thereafter shall be one-half of the amount(s) set forth in Section 6 above.

6.8 **Closing Prior to Completion of Construction.** The Sales of some Units may close prior to the completion of construction of the Project. Project Broker acknowledges that the Condominium Law may prohibit escrow from releasing buyer's funds for the payment of broker's commissions prior to the completion of construction of the Project. In that event, and notwithstanding anything to the contrary contained in this Agreement, Developer shall not be obligated to pay Project Broker any commissions

otherwise owed under this Agreement until such time as escrow is permitted by applicable law to release funds sufficient to pay such commissions.

6.9 **Commissions on units already under contract/reservation:** Current project broker understands and agrees that current project broker (PLM) will be paid a \$1000 only processing fee and will not be entitled to any commissions on units currently under contract/reservation by the previous project broker (ReMax). Current project broker agrees to service all clients and track escrow status of all project sales regardless of which project broker made the sale. Should any of the units sold by the previous project broker fall out of escrow and be placed back in the current inventory, current project broker shall be entitled to commissions as defined in section 6 of Brokerage Agreement.

7. **No Other Compensation.** Project Broker's sole right to compensation for all services provided in connection with the Project is as set forth in Section 6. Developer shall not be responsible for payment of any costs or expenses incurred by Project Broker in connection with the services Project Broker is required to provide hereunder, and Project Broker shall have no right to incur any expenses or obligation on behalf of Developer.

8. **Cancellation of Sales Contracts.** Developer shall have the right to cancel any Sales Contract without liability to Project Broker for any Commissions that would have otherwise been payable hereunder. Upon any such cancellation, no Commissions shall be paid to Project Broker. Developer agrees to indemnify, defend and hold harmless Project Broker from any and all damages, costs and expenses, including reasonable attorney's fees and costs incurred by Project Broker in connection with any claims, demands, suits or actions made by buyers and/or their agents as a result of Developer's cancellation of Sales Contracts, unless such claims involve the Project Broker's negligence or willful misconduct.

9. **Compliance with Project Documents, Securities, Laws, Legal Interpretations and Agency Disclosures.**

9.1 **Personnel.** Project Broker agrees that it shall be responsible for the conduct of, and representations made by, all of Project Broker's Sales Staff and all other sales agents or personnel of Project Broker. Project Broker shall instruct its Sales Staff to read and become familiar with the Project Documents and any instructions that Developer may furnish from time to time.

9.2 **Securities Laws.** Project Broker agrees that it will carefully instruct its Project Sales Staff as to the following securities issues, and shall be responsible for compliance by all of its Sales Staff with the specific restrictions listed below.

9.2.1 Neither Project Broker nor any of its Sales Staff, agents, or representatives shall make any direct or indirect representations whatsoever to anyone regarding rental opportunities for Units in the Project or the availability of rental pools or rental management arrangements for any of the units;

9.2.2 Neither Project Broker nor any of its Sales Staff, agents or representatives shall make any direct or indirect representations whatsoever to anyone regarding the investment potential of

acquiring and owning a Unit, whether through rental opportunities, resale potential or otherwise, or the possible future value of a Unit;

9.2.3 Project Broker shall ensure that its Sales Staff, agents and representatives are advised that federal and/or Hawaii securities agencies and authorities may treat the sale of a Unit as an unregistered "security" if either of the restrictions set forth in Sections 9.2.1 and 9.2.2 is violated, thus rendering the sale a violation of federal and/or state securities laws, and subjecting the parties, including Developer, to possible criminal penalties and civil liabilities.

9.3 **Agency.** Project Broker will disclose to all buyers prior to the execution of a Sales Contract that the Project Broker and all of its Sales Staff represent the Developer. Project Broker will submit a copy of this disclosure, signed by all buyers, with the Sales Contract. Project Broker shall represent only Developer. Project Broker shall not enter into any dual agency agreements or offer any subagency arrangements to any person without Developer's prior written consent, which may be withheld in Developer's sole discretion.

10. **Cooperating Brokers.** Project Broker will cooperate fully with all licensed real estate brokers and sales agents and encourage their participation in the sale of Units. By written notice prepared by Project Broker and approved by Developer, Project Broker will notify Cooperating Brokers of the contingencies for payment of commissions and the obligations of sales personnel under this Agreement. Project Broker will have all Cooperating Brokers sign a Cooperating Brokerage Agreement in a form acceptable to Developer.

11. **Indemnification.**

11.1 **Project Broker Indemnities.** Project Broker shall indemnify, protect, defend, and hold harmless Developer of and from any and all damages, cost, and expenses, including reasonable attorneys' fees, incurred by Developer in connection with any claims, controversies, demands, suits, actions, judgments, liability or obligations of any kind, whether at law or equity, arising out of or in connection with (a) representations or misrepresentations or any acts or omissions of Project Broker or its agents, sales persons, or employees, including without limitation, any unauthorized advertising, violations of applicable laws, rules or regulations or failure to perform the terms and conditions of this Agreement; (b) any claims brought in connection with the Project by any brokers or sales agents for commissions or fees; and (c) any claims by Sales Staff for benefits described in Section 15 below. The rights and obligations of the parties set forth in this Section 11.1 shall survive the termination of this Agreement.

11.2 **Developer Indemnities.** Developer shall indemnify, protect, defend, and hold harmless Project Broker of and from any and all damages, costs and expenses, including reasonable attorneys' fees, incurred by Project Broker arising out of or in connection with (a) Developer's gross negligence or willful misconduct in the performance of this Agreement or breach of this Agreement; or (b) any representation, warranty, or misrepresentation made to any Retail Buyer or to Project Broker by Developer during the term of this Agreement. The rights and obligations of the parties set forth in this Section 11.2 shall survive the termination of this Agreement.

12. **Project Documents.** Developer, at its sole expense, shall provide Project Broker with a reasonable quantity of sales brochures, Sales Contracts, condominium public reports, and other documents required to be provided to prospective buyers. Developer reserves the right to make changes to the documents and shall promptly inform Project Broker of any of any such changes. All sales brochures, Sales Contracts, files and other documents prepared or provided in connection with this Agreement shall remain the sole property of Developer. Project Broker agrees to return all such materials to Developer promptly upon termination of this Agreement and shall not use such materials directly or indirectly for any other project without the prior written consent of Developer.

13. **Termination.**

13.1 **Termination Without Cause.** Either party may terminate this Agreement without cause by giving thirty (30) days prior written notice to the other party at any time during the term of this Agreement.

13.2 **Termination With Cause.** Developer shall have the right, upon five (5) calendar days' prior written notice to Project Broker, to terminate this Agreement upon the occurrence of a violation or breach of any representation, warranty, covenant or agreement made by Project Broker in this Agreement, or if Developer determines, in its sole discretion, that Project Broker is not satisfactorily performing its duties and obligations under this Agreement; provided, however, that such termination shall not constitute a waiver of any other legal remedies available to Developer for the enforcement of its rights hereunder.

13.3 **Delivery of Files to Developer/Cooperation on Termination.** Upon any termination of this Agreement, Project Broker shall deliver promptly to Developer all files, plans, documents, written and or electronic information and materials of any nature whatsoever related to the Project or to the Units, and cooperate in the orderly transfer of the duties hereunder to a new broker.

13.4 **Payment of Commissions Upon Termination.** Project Broker shall be entitled to receive Commissions payable pursuant to Section 6 hereof only if Project Broker continues to perform all of the duties and obligations required to be performed by Project Broker under Section 1.11 above. If project Broker fails to perform any of its obligations set forth in Section 5, any such commissions payable to Project Broker shall be reduced as provided in Section 6.7.

14. **Independent Contractor.** Project Broker expressly acknowledges and agrees that it is an independent contractor and is not an employee of Developer or any other entity affiliated with Developer. Project Broker agrees that it shall be liable for, pay for, and provide for all workers' compensation, unemployment insurance, and other benefits, if any, payable with respect to the Sales Staff and further agrees to indemnify, protect, defend, and hold Developer harmless, with respect to any claims by Sales Staff relating to such benefits.

15. **Assignment.** Project Broker shall not assign, convey, alienate, pledge, hypothecate or otherwise transfer Project Broker's interest hereunder (including any interest in or right to any commissions hereunder) or delegate its duties hereunder. Developer may assign its interest hereunder without the joinder or consent of Project Broker, to any person or entity that acquires all or substantially all of Developer's right, title and interest as "Developer" in and to the Project.

16. **Miscellaneous.**

16.1 **Effect of Headings.** The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provision.

16.2 **Modification; Waiver.** No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by Developer and Project Broker. No waiver of any of the provisions of this Agreement shall constitute or be deemed to constitute a waiver of any provisions, whether or not similar, nor shall any wavier constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

16.3 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16.4 **Parties in Interest:** No Third-Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Developer and Project Broker and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision of this Agreement give any third persons any right of subrogation or action over or against any party to this Agreement.

16.5 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Developer: 3702 Lower Honoapiilani, LLC
P.O. Box 54
Longmont, CO 80502

To Project Broker: The Breakers Realty LLC
3708 Lower Honoapiilani Road, #40
Lahaina, Hawaii 96761

Any party may change its address for the purposes of this Section by giving the other parties written notice of the new address in the manner set forth above.

16.6 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

16.7 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Hawaii and any litigation regarding this Agreement shall be brought only in the courts of the State of Hawaii.

16.8 **Attorneys' Fees.** Should either party hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision thereof, including but not limited to instituting any action or proceedings to enforce any provision of this Agreement, for a declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the other party for all costs and expenses incurred in connection therewith, including but not limited to reasonable attorneys' fees for the services rendered to such prevailing party.

16.9 **Instruments of Further Assurance; Good Faith.** Each of the parties hereto agrees, at its own expense, to execute and deliver to the other any and all further instruments and documents as either may reasonably request in order to carry out any of the provisions of this Agreement. Developer and Project Broker shall act in good faith in all respects relative to the transactions contemplated hereby.

16.10 **Time is of the Essence.** Time is specifically declared to be of the essence of this Agreement, and of acts required to be done and performed by Developer and Project Broker.

16.11 **Construction; Entire Agreement.** This Agreement has been negotiated by the parties with and upon the advice of their respective legal counsel, all of whom have participated in the drafting hereof. Consequently, the parties agree that no party shall be deemed to be the drafter of this Agreement, and that in the event his Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as the drafter. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

PROJECT BROKER:

The Breakers Realty LLC

By _The Breakers Realty LLC
Reggie Golden



By _____
Its Manager

DEVELOPER:

3702 Lower Honoapiilani LLC, dba The Breakers

By 3702 Lower Honoapiilani, LLC.
Reggie Golden



By _____
Its Manager

Exhibit "A"

Sales Activities. Project Broker shall use its best efforts, skill and judgment to market the Project, and to assist the Developer in establishing, implementing and operating a sales program for the Project. Sales activities by Project Broker shall include, but we are not limited to, those activities described in Exhibit "A" attached hereto; direct mail advertising; preparing newsletters; presenting information seminars to homeowners, brokers and real estate sales persons; hosting informational parties and meetings; holding open houses; and traveling out-of-state as necessary. Each member of the Sales Staff shall carefully read, review and become familiar with all Project Documents prior to commencing any sale activities, and shall comply with all instructions and directives provided to Project Broker by Developer, and shall comply with all requirements set forth in Section 9 hereof.

Exhibit "B"

Marketing and Advertising Budget. Project Broker shall not be required to contribute any amounts to the marketing or advertising costs of the Project. However, Project Broker shall assist Developer in preparing a marketing and advertising budget for the Project. A preliminary marketing and advertising budget is attached hereto as Exhibit "B" and made a part hereof. Project Broker shall not publish or disseminate any advertising or marketing materials relating to the Project or Developer without Developer's prior written approval, which approval may be withheld in Developer's sole discretion. The marketing and advertising budget shall be reviewed by Developer and Project Broker on a quarterly basis and adjusted as necessary to achieve maximum sales of the Units in the Project. Need Exhibit B

Exhibit "C"

Status Reports. Project Broker shall maintain accurate and current records of the status of all its Project transactions, including names and addresses of buyers, due dates of deposits and other payments, deadlines for and satisfaction of any contingencies, and schedules of closing dates. Project Broker shall provide a status report on all such items to Developer on a weekly basis, or more often if warranted by sales activities. Project Broker shall also record and provide such other information on prospective buyers as Developer may request. Exhibit "C"

Sales Follow-Through. Upon acceptance by Developer of a Sales Contract submitted to it by Project Broker, Project Broker shall take all steps necessary to arrange for the closing of such sale, including without limitation (a) assisting the buyers in obtaining any necessary financing approvals in a timely fashion; (b) obtaining payment of additional deposits required under the Sales Contract; (c) obtaining receipts for documents required by Developer (including receipts for condominium public reports); (d) obtaining all necessary approvals and signatures from buyers (including waivers of the right to cancel the

Sales Contracts pursuant to the Condominium Law); (e) assisting with the satisfaction of any contract contingencies; and (f) coordinating all other closing activities with Developer, any Cooperating Brokers, escrow, lenders and the buyers.